

MAINE STATE HARNESS RACING COMMISSION

MINUTES OF MEETING

September 20, 2019

Burton M. Cross Office Building Room 208

111 Sewall Street

Augusta, Maine

Commission Members Present: Michael Timmons, Chair, William McFarland, Edward Kelleher, James Kelley, Jr., and Richard Shiers

Commission Members Absent: None.

Staff Members Present: Mark Randlett, AAG, Ron Guay, AAG, Henry Jennings, Carol Gauthier, and Miles Greenleaf

1. Call the Meeting to Order and Introductions: Michael Timmons, Chair

2. Review and Approval of Minutes

Commissioner McFarland made a motion to approve the minutes of May 17, 2019 as printed. Commissioner Timmons seconded. Vote 2-0.

Review and Approval of Decision and Orders

None.

3. Adjudicatory Hearings:

a. RE: 2020 Race Date and Track Licensing Proceedings. The Commission will hear and act on pre-hearing motions.

Note: Track licensing and race date testimonial hearings will be scheduled for a future date.

AAG, Guay stated this is going to be an occurrence where he will be sitting next to them as a hearing officer to the extent that the Department of Agriculture has requested representation under their new policy he represents the Department of Agriculture in those cases either AAG, Randlett or another hearing officer will be provided to give you advice during the proceedings. He has broken up the agenda today. There will be a number of matters where he will be here on behalf of the Department of Agriculture, Conservation, and Forestry so when he's speaking, he's not speaking for the Commission but rather he's speaking for the Department. He's entered his appearance for the Commissioner on the 2020 Race Date proceedings. As you might imagine a lot of this stuff happens in the background. A lot of the proceedings and procedures Mr. Randlett is the hearing officer. They were originally scheduled today to have preliminary evidence submitted about race calendars. There was a view that perhaps the 2019 Race Calendars weren't the best product and that they would endeavor to do better this year by starting the process earlier. They were not in the position to do the calendars today. Instead the Commissioners will have to vote on some matters on this race date hearing. He asked Hearing Officer Randlett to officially open the race date track licensing proceedings to go on the record then he would have an initial motion. Hearing Officer Randlett asked if they could move to his motion. AAG, Guay stated that when he is doing evidentiary proceeding today what he means he would like the record to the extent they have a transcript person to go to the actual proceeding. Hearing Officer Randlett stated so at this point he understands what he is saying. We are going to discuss on the record matters relating to the upcoming race date track licensing proceedings. There is going to be some preliminary matters that need to be resolved and there may be some motions that need to be addressed by the Commission, and he'll open it up to AAG, Guay to kick things off. AAG, Guay stated there is a motion for intervention that the Commissioners will need to vote on. There may be additional motions but the parties to the proceedings have not been able to agree on whether or not there will be a motion on this other matter, rather than having that discussion before the Commissioners he would ask if the Commissioners could recuse

themselves for a few minutes so that perhaps the parties with the hearing officer determine what motions the Commissioners would hear. Hearing Officer Randlett stated speaking as your legal counsel for the purposes of this proceeding the request is that the Commissioners leave the room, so that matters regarding procedures can be discussed that may include some discussion that would perhaps improperly influence your ultimate decision making on these proceedings. He noted for the record that the Commissioners have left the room. AAG, Guay stated that the Department would request that the Commission vote and set a date for which licenses would be received for this process. It was apparent to him or at least he might have misunderstood that Scarborough Downs was opposing the consideration of a potential application of another entity. He would seek an order from the Commission to actually set a timeframe for the receipt of applications for consideration for licensing. That's one motion. He believes there's a motion for intervention from First Track. He thinks the Commission will need to make a motion on that. Another matter is he would respectfully submit there be issue identification of what the issues are going to be in the actual licensing proceeding. So, in conclusion he believes that there will be two motions that need to be dealt with by the Commissioners. Motion for intervention and he would also request a motion to set a date for the application, and he's not sure that is something you could do but to make it binding he thinks that the Commission would do that. Hearing Officer Randlett stated he would clarify a few things to make sure he is following along appropriately. Let's start with the motion for intervention. Mr. Cianchette you're here on behalf of First Track, correct. Mr. Cianchette stated correct. Hearing Officer Randlett stated that it was his understanding from the prehearing conference that a motion for intervention is essentially a place holder to get you a seat at the table for the licensing proceedings and the race date proceedings, and that you would if you were allowed to submit an application and be heard on that basis than you would withdraw your request for intervention. Mr. Cianchette stated for the time being. Hearing Officer Randlett stated he wasn't sure what would happen today. Hearing Officer Randlett stated to Mr. MacColl you are representing Scarborough Downs. Do you intend to make any objection to a license application from First Track? Mr. MacColl stated he hasn't seen a license application from First Track. So, the short answer is, he doesn't decide rather he's going to oppose some other parties' motion in court or administrative proceeding until he sees it. Hearing Officer Randlett stated he'll take that there's a chance you will be opposing it, so we'll treat it in that manner. AAG, Guay with respect to the licensing proceeding is there likely there will be contested and some uncontested licenses. AAG, Guay stated he would just suggest that to the extent that there are any votes on any motions pertaining to First Track that any Commissioner that may or may not even their facility would have an indirect basis with First Track that they recuse themselves. This is not uncommon at all in these proceedings Mr. McFarland would recuse himself on Windsor and Mr. Timmons would recuse himself on Cumberland. Hearing Officer Randlett stated he will bring the Commission back in. He doesn't think they need any further discussion on this. He does think it's within the Commission's authority and discretion to table and continue certain proceedings, and he thinks it's certainly appropriate as administrative process for everybody to be given an opportunity to get their issues before the Commission in a timely manner. Hearing Officer Randlett stated they had some discussions regarding some pending motions. There are two matters he thinks that the Commission will need to address initially. One of them deals with a potential for an application to be filed at this point from First Track who's represented by Michael Cianchette who is here. They are indicating there is likely an application to be filed. One of the issues for the Commission to determine is if they will accept an application at this stage and if so when that deadline for that application should be. If the Commission makes a determination that such an application should not be allowed at this stage the next question will be whether or not First Track should be allowed to intervene in the licensing and race date proceedings. They have filed a motion for intervention. They will deal with that second because the outcome of that motion will depend on the Commission's handling of the first issue. There will also be some scheduling matters for the Commission to consider at this point. He asked Mr. Guay if he would like to address the Commission on any of the first issues. AAG, Guay asked so you're asking for the department's position on the application. Is that true? Hearing Officer Randlett stated yes. AAG, Guay stated it's not the timing of it specifically whether or not the Commission has established a time to accept applications by their prior action. Hearing Officer Randlett stated by way of background. There was some discussion at the Commission's July meeting regarding scheduling of this particular hearing and the submission of application and he did listen to the minutes from that proceeding while the Commission itself did not

establish any particular deadlines for applications it did delegate authority to Mr. Jennings to address it in a way that he felt appropriate with regard to any deadlines before hearing and Mr. Jennings did in fact send out a notice to various tracks that will be addressed by the Department. The first issue that the Commission will need to decide this morning is whether or not there was in fact a deadline specific deadline established for the submission of either renewal or new license applications for harness racing tracks. He asked AAG, Guay to explain the departments position regarding of any deadlines with the submission of applications at this point. AAG, Guay stated he will address it on two levels. First as a matter of law. The statute does not establish a time in the statute for when the applications have to be received in regard to the action taken by the Commission in July. The department believes that the authority given to the executive director was to bring forward the time where people would be submitting their information. The context of that request was because there was general agreement that the race calendar for this year was not the best race calendar for the industry in terms of clarity; and there may have been an error or two, so the departments position is that the direction by the Commission to take information in early was in no way related to any initial applications but rather it was for renewals so that they could put together a race date calendar and they would have settled that discussion on today if the Commission were to interpret the date. So, Mr. Jennings subsequently did send out a memo asking for information to be submitted by a certain date, he does not have a copy of that exhibit, but he could supplement the record with that. The language of the memo indicated that late applications may be not considered. It did not say late applications would not be considered. That's the first thing. The memo was not clear that applications would not be considered after the date. Number two. It's not clear that Mr. Jennings would have the authority to set a date certain on his own although the Commission did authorize him to start the process. He thinks it's probably beyond his authority on what date to set. The third consideration is if the Commission were to strictly apply that in fact he did have the authority to set the date that was the date and any applications subsequent to that will not be considered, then an informal evaluation of where the applications stood on the date would be that they would have a very short race date proceeding. They believe not one of the entities had substantially submitted all the required elements of their application. Lastly the memos were sent out to the current license holders and he's not sure that Mr. Cianchette nor the general public did not receive any notice as to deadlines. It would be rather difficult to try to figure out who should be getting these notices. Essentially the memo is just what that is a memo was not actually put into place an order issued by the Commission. It was an order issued to the Commission and it was not intended to address new applications but rather renewals. If that's what you guys meant, then they don't need to schedule any other race dates because none of the tracks got their materials in. That's his argument on why applications are not restricted at this point in time. An application by Mr. Cianchette or any other entity should be considered by the Commission. Hearing Officer Randlett asked if anybody wants to be heard with respect to the issue of application deadlines. Michael Cianchette is here on behalf of First Track Investments, LLC as the manager of that entity is and, in another life, he's also an attorney for better or worse. On the legal question of the notice as AAG, Guay and Hearing Officer Randlett have mentioned there is a motion pending before the Commission for First Track to intervene. The genesis of that motion was predicated on not wanting to submit an incomplete application for licensure in 2020. Based on AAG, Guay's statements that centrally every track in the State of Maine submitted incomplete licensure. He certainly could have done that but in most administrative hearings he's been a part of a material incomplete license application or any other application is effectively not an application which is the genesis behind the pending motion to intervene. In order to provide a complete license application if the Commission decided to open it up so that all current and potential applicants could submit a complete application by a date certain he'd certainly would be willing to withdraw his motion to intervene as it would not be timely. Hearing Officer Randlett asked if anybody else would like to be heard on the issue concerning the license application. Roger Katz an attorney from Augusta and he is here on behalf of the Maine Harness Horsemen's Association and on this issue they agree with Mr. Guay and his analysis of the situation and he does have a copy of the memo that went out somehow to someone, but the subject line of the memo is filing renewal application and request for race dates so the implication to him is if someone has a license and they are seeking to renew it and there are times by which they need to get certain things filed. But it really doesn't talk at all about the possibility of a new application from First Track or from anybody else for that matter. They agree with that analysis. There ought to be a deadline set because as Mr. Guay also pointed out there's nothing

right in the statute even the rules of the commission that says this is the deadline for filing applications for either renewals or new ones. The other things are as Mr. Guay pointed out and he thinks Mr. Cianchette as well a number of the applications were not all of them were complete in one way or another. For instance, it's their position that in order to apply for a license at a facility you must also show that you have a legal right to use that facility. In the case of Scarborough Downs of course Scarborough Downs is owned by an entity but currently last racing session it was operated by Davric pursuant to a lease they had. As far as they know at this point there is no lease at the time of the application and still today as far as they know. Davric doesn't have any legal right to use that track yet and so until or unless they do their application would be insufficient as well. He thinks he will stand corrected but not only were virtually every application incomplete but there were he thinks two fairs where no application was filed. They agree with Mr. Guay and ask the Commission to set a deadline for filing a renewal or new applications. Hearing Officer Randlett asked if anybody else wish to be heard on this issue before the Commission deliberates on this. Ed MacColl is here on the behalf of Davric Racing, LLC. He's not crystal clear on what the issue is that you are about to be voting on or what is being addressed. They hope they have a licensing hearing today and get a license. Hearing Officer Randlett stated at this point the Commission will have a discussion and entertain a vote if you feel appropriate to on the issue of whether or not a license application deadline has been set and whether or not application should be allowed by a certain date before a licensing proceeding takes place. Commissioner Kelley made a motion that they continue this hearing to another date. Commissioner Shiers seconded. Hearing Officer Randlett stated they can continue the hearing and then they can have discussions regarding an appropriate date with the input from the executive director. Commissioner Timmons asked for any comments from other Commissioners before they vote on this matter. Hearing none, all those in favor of continuing the race dates to a later date please so indicate. Vote 5-0. Hearing Officer Randlett stated moving onto the second issue is the question of whether or not the Commission wishes to accept further applications pending the licensing hearing which will be rescheduled. After a brief discussion, Hearing Officer Randlett stated the motion would be to establish an application deadline for one month for full applications with all the necessary information. Commissioner McFarland stated he'll make a motion that they continue to accept applications and that complete applications would be filed with this Commission and the executive director no later than October 21st deadline 2019 with the exception of the bonding which occurs on a reoccurring specific date. Commissioner Kelleher seconded. Vote 5-0. Hearing Officer Randlett stated Mr. Cianchette you had pending a motion for intervention in the licensing and race date proceedings given that First Track is given an opportunity to submit an application by October 21st. Do you withdraw that motion for intervention? Mr. Cianchette stated he does. Hearing Officer Randlett asked does the Commission wish to having set the deadline for the submission of applications as it would now be an appropriate time to discuss the initial date for licensing proceeding begin keeping in mind that there would need to be 3 to 4 weeks for that hearing to allow time for a public notice. AAG, Guay stated he would request to the extent that a motion on the Off-Track Betting facilities at this point not be included in the race date proceedings. That does not mean you guys are not going decide Off-Track Betting facilities it just won't be in the context of this big hearing. You'll do it during the regular business meetings. He's motion would be to remove to the extent that they've joined in their licensing has been in the notice that they officially be taken out of the race date proceedings at this point. Commissioner Timmons asked if any Commissioner had anything to say. Commissioner Kelleher moved to exclude Off-Track Betting facilities from these proceedings. Commissioner Kelley seconded. Vote 5-0. Hearing Officer Randlett stated it would be up to the Commission and Commission staff to establish a hearing date. They anticipate that there may be more than one day required for the licensing issues. As soon as he receives notice whatever the hearing date will be, he anticipates issuing a prehearing order that will establish requirements for the submission of particular issues and notifications with respect to all parties regarding matters for example sharing documents that they should be aware of. He thinks at this point this concludes his involvement with regard to the licensing race date proceedings.

- b. **RE: Motion for Reconsideration, Appeal by Ronald Dinsmore.** Assistant Attorney General Ronald Guay is requesting that the Commission reconsider Mr. Dinsmore's appeal. AAG, Guay asked AAG, Randlett to act as counsel to the Commission on these motions to the extent that they have questions for you, and he knows in some respect that's really unfair because you're not

prepared for that. He's hoping that his legal arguments will be persuasive enough that they won't require any opinion from you. Lastly there is a continuing proceeding regarding Mr. Hitchcock which he would ask him to be the hearing officer because he had given advice to the department and thus not suitable to be the hearing officer in the proceeding. Commissioners your rules allow for a reconsideration of a previous decision. You will notice under the review and approval of the decision and orders there were two decisions and orders which you did not have to approve. So, he's here asking them to reconsider your decision prior to his writing the decision and order. He stated for the record that this is a motion for reconsideration. Motions for reconsideration are allowed under your rules. He is here entering his appearance on behalf of the Department of Agriculture, Conservation, and Forestry. He is not the hearing officer anymore on this case. He was the hearing officer and now he's here at the request of the Department. The Department is asking you to reconsider the decision you made on Mr. Dinsmore. After further discussion, AAG, Guay stated the issue was whether or not he brought the horse back. Hearing Officer Randlett stated so that's the issue that you are restricted to with respect to your reconsideration of this issue. Commissioner Timmons stated this is kind of difficult to say the least. Commissioner Kelleher moved that they do not accept the appeal. Commissioner Shiers seconded. AAG, Guay stated specifically the motion is for reconsideration. You'd be denying the reconsideration. Hearing Officer Randlett stated to clarify the motion just for the purposes of the Commission members. He gave the Commissioners what he thinks would be the appropriate language for the purposes of this proceeding if that's your desire. The motion would be for denial of the motion for reconsideration of the appeal. Commissioner Kelleher moved that they do not accept the reconsideration request for an appeal. Commissioner Shiers seconded. Commissioner Timmons asked for any further discussion from Commissioners on this matter. Hearing Officer Randlett stated he thinks it would be helpful for the purposes of the record that there be some discussion with regard to the reasons why the motion for reconsideration is being denied that way it's clear at least if there is an appeal there could be an understanding by any review in court as to whatever reasons or justifications that the board relied upon in denying the motion for reconsideration in light of the information provided to you by Mr. Guay. Commissioner Kelleher stated he made the motion because he believes from the last hearing if he recollected correctly that Mr. Dinsmore did leave the paddock and eventually brought the horse back to be tested. Hearing Officer Randlett stated he would remind the Commission members that the issue that you need to consider for the purposes of this reconsideration is whether or not he failed to bring the horse for testing. That was the issue that was before the board in the initial notice of violation and the appeal and that was the basis on what you found in violation so that would be the issue whether or not there might be other violations that existed wouldn't really not bare on the motion for reconsideration. Commissioner Kelleher stated if you considered that it would make a mockery of the testing rule. Hearing Officer Randlett stated could you explain that. Commissioner Kelleher stated saying that in the motion you're their legal counsel and you're telling us that this is the wrong motion. Hearing Officer Randlett stated no, let him explain. What he is saying is the motion for to disapprove the motion for reconsideration is a correct motion what he is saying is if you should have articulated in a basis for why you're denying the motion for reconsideration on the record so that this could be reviewed by a court. Those reasons that you rely upon for denial should be relevant to the basis for the finding of a violation in the first place and in this case just to be clear and it's his understanding and he has not seen the file he wants that to be clear but it's his understanding that the basis for the violation was failure to bring the horse for a test, and that was what the finding of the violation was and whether or not there was other failure by Mr. Dinsmore to conduct himself in a way that would have been required by the law or the rule he was not charged for those violations and not found in violation of those charges and therefore would not be an appropriate basis for reconsideration. Now if you can tie. Commissioner Kelleher stated he's going to withdraw his motion. AAA, Randlett stated he still needs him to say and this is important for the Commission members to understand. Now if you can tie his other behavior properly into a finding that he failed to bring his horse for testing those would be appropriate considerations but there has to be a connection. Commissioner Kelleher stated he's withdrawing his motion. Hearing Officer Randlett stated actually he believes that motion has been made and seconded. He thinks this is part of Roberts Rules of Order or Palmers Rules and he doesn't think that you are technically required to follow either set of rules or procedure. He thinks you can do whatever is appropriate in terms of state or process so if you wish to withdraw that motion and you withdraw the second then the Commission wishes or allows you to proceed

in that matter as long as it's clear on the record that's what you all are agreeing to. Commissioner Timmons stated the only reason it makes it so difficult is it appears when you keep hearing it that he did take the horse back for testing. The fact that there are violations prior to that and the judge not recognizing that it puts them in a real difficult spot because they all know all of them in the industry after the race you do not leave the paddock, and leaving the paddock is a violation and he wasn't charged with that. He was charged with he did take the horse back and if that's the case he's not guilty because he took the horse back, he sure as heck missed the part by the judge which wouldn't be his fault. He's convinced now that he's going to vote that in favor that he took the horse back to the test barn. That's not absolving him in his own mind of what he did or didn't do. He got away with that. He's ready to have a motion that will address the spot they're in. Commissioner Kelley asked if they need to vote on withdrawing that first motion or not. Hearing Officer Randlett stated he thinks it's clear for the record that that motions been withdrawn. He doesn't think it's necessary to have an actual vote on that and the second has been withdrawn. He thinks it would be appropriate at this time for somebody to make a motion to approve the motion for reconsideration if that's what you wish to do. Commissioner Timmons stated that he would like to have a motion that they can vote on. Commissioner Kelley made a motion that they approve the reconsideration of the decision. Is that the right wording? Hearing Officer Randlett stated you could say to make a motion to approve the motion for reconsideration and vacate the decision would be the second part of that. Commissioner Kelley stated and vacate. Commissioner Timmons asked for a second. Commissioner McFarland seconded the motion. Commissioner Timmons stated it's been moved and seconded. Any further discussion on this motion. Commissioner McFarland stated he wanted to make a quick statement to the other Commissioners. The fact is they've been down this road a couple of times before some of you were present. Like it or not like it if the officials that they have who are regulating the harness racing industry have to be more specific when they start writing this stuff up and maybe some of these violations were readily accepted back in the old days but in this new era things are a little bit different. You best spell it out like it is if you expect this Commission to in fact uphold what it is brought before them. It's hard enough making some of these decisions when it's cut and dry but it's certainly tremendously difficult when it's muddy and that's what he would call this very muddy. It could have been a whole lot different. Commissioner Timmons asked for a vote. Vote 5-0.

- c. **RE: Motion for Reconsideration, Appeal by Russell Lanpher.** Assistant Attorney General Ronald Guay is requesting that the Commission reconsider Mr. Lanpher's appeal. AAG, Guay stated he is making another motion for reconsideration. This is the case of Russell Lanpher. He is here again representing the Department of Agriculture, Conservation, and Forestry. He was their hearing officer, so he was in Mr. Randlett's position. The Department had consulted with him subsequent to the decision and asked him to ask for reconsideration. The specific issue in the Lanpher case was you granted a motion to dismiss the appeal based on the fact that Mr. Lanpher had not filed the objection on the track. What the department is asking you to do is not to grant Mr. Lanpher's appeal but rather to allow Mr. Lanpher to actually present his evidence and to allow the judge to present their evidence and the reason they're doing that is obviously the department would be in the process of defending the judge in the Lanpher decision. So they're not arguing that there was a wrong decision on the appeal because frankly they never got to the issues on the appeal; however, the department is now concerned with the decision on the procedure and would like you folks to vacate that and deny the motion to dismiss and to the extent you folks saying well wait a second you guys made that motion to dismiss. They had not fully thought threw the implications of that decision and on the agenda today there are two appeals and he thinks in both cases neither one of them would be able to be heard so let him explain. Your decision that limits the right to appeal those chapters regarding on track violations to somebody on the track before they leave the track. For example, if somebody is placed so he might not be he's in the race and some other driver files an objection it's an appeal, then the judge says you know what he looks at it and it's interference Mr. Guay I'm placing your horse he didn't file the objection so a literal reading of the statute the rule is not indicated because he had already as hearing officer described to you the situation where a judge may for example turn the light on and that means anyone who would have been placed would not have the right to appeal it. So, in this case that doesn't square with sort of the notion that people that are aggrieved by the decision of the Commission or aggrieved by an action in harness racing has a right to have the case heard. He fully appreciates and would suggest to you a reading and discussing with his

client and that rule is that if he leaves the track and a week later he decides to appeal a race and he was on the track, he appeals a race he tries to appeal a race a week later but he didn't enter an objection then in those cases his client the Department of Agriculture would say hold on you didn't file your objection while you were on the track. They think that's the proper application of the rule. They don't think the proper application is for a person who is affected by a decision to say well you didn't file the original objection that just results in a whole class of people being prohibited from filing appeals of judge's decisions that they don't think when they read the rule in full context is what the intent was so the department would like to for reconsideration to withdraw their motion for dismissal and ask that the proceeding be rescheduled. Hearing Officer Randlett stated the motion was made based on one particular interpretation of the rule with respect to the need to make an objection. AAG, Guay stated yes by them. Hearing Officer Randlett stated you are now suggesting to the Commission that the interpretation of the rule that was applied by the department and the Commission at the time was faulty because you've reviewed it in further detail and determined that there would be broader implications to other parties by that particular interpretations. You're asking the Commission to reconsider its interpretation or its application of its rule. AAG, Guay stated yes. Hearing Officer Randlett stated so does the Commission understand what that is. You're simply being asked to review how you interpreted and applied particular commission rule with respect to this particular issue and the reason you're being asked to do that is because there is a concern there may have broader implications, and the result of doing so in this case would not absolve Mr. Lanpher it would simply provide him an opportunity for a hearing before the Commission on the issue of the case itself. Commissioner Kelleher asked that the hearing not be held today. Hearing Officer Randlett stated the hearing would not be held today. It would be scheduled for a hearing at a later date. Is that correct. AAG, Guay stated that's correct. Hearing Officer Randlett stated he just wanted to make sure that everybody understood that this is a little different from the previous case because in that case it was a finding of a violation and was not based on any evidence on the record but here we're talking about interpretation of a rule by the Commission so you can have a conversation regarding how you feel this rule should be appropriately interpreted and implied. You've heard the department position as to why they believe the interpretation was in fact was wrong and could result in other problems but it's up to the Commission to decide how you feel this rule should be appropriately interpreted. AAG, Guay stated they don't know whether Mr. Lanpher should get his appeal or not they're not making that argument. What they're saying is if you don't reverse this decision then he guesses all the other cases from now on they're going to say sorry you got placed but you can't appeal it because you're not the one that filed the original objection, so that's why they're not saying he should win. What they're saying is he should have the ability to appeal the case. Hearing Officer Randlett stated he just wanted to point out Mr. Guay picked up on an issue that he missed because he was actually reviewing the rule but it bears some stressing that he just wants to reiterate that it's okay to discuss the interpretation of the rule and the implications of that, but if you could refrain from discussing specific facts of the case that may be before you that would be the best because what they don't want to have happen is have the other Commission members if they've seen facts that relate to an alleged violation; and you discussion them in a proceeding you know an open meeting like this it could interfere with the ability of the other Commission members to render a fair and impartial decision, so he's not making any particular objections to what you said he just wants to remind everybody to be careful about the kind of information they are stating during these proceedings. AAG, Guay stated the difference is there was a proceeding, there was a hearing, a notice of hearing, there was a hearing officer, there was actually a proceeding and he thinks that is the difference. This is a motion for reconsideration on a procedural thing. There will be a discussion if you guys grant the motion. It's not the same that you guys can't talk about it or ask questions. It's just the stuff you were potentially going to go into was not in front of the Commission today. Commissioner Kelley stated the question today is only whether or not we're going to grant the hearing which they didn't do last time. AAG, Guay stated correct. It's to vacate the motion to dismiss and to set it for a hearing. Hearing Officer Randlett stated that's correct, in doing so it involves a decision concerning how you wish to apply this rule. Commissioner McFarland made a motion to vacate the decision made on Mr. Lanpher previously and reschedule it for another hearing. Commissioner Kelleher seconded. Commissioner Timmons asked for any further discussion. Commissioner Timmons stated they are ready for a vote to reconsider a hearing on this particular case with all parties present. Vote 5-0.

- d. **RE: Michael Hitchcock, Complaint Number 2018 MSHRC 14.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is the trainer of record for the horse, "Carbon Footprint". A blood sample obtained from Carbon Footprint prior to the First (1st) Race at Northern Maine Fair on August 3, 2018, showed an elevated level of total carbon dioxide.
- AAG, Guay stated he would move that they combine the matters of "d" and "e" regarding complaint numbers 2018 MSHRC 14 and 2018 MSHRC 15 into one proceeding, so he moved that they consolidate the two proceedings. Hearing Officer Randlett stated that makes sense so they'll do them as consolidated proceedings, so the motion is granted. David Bobrow stated no objection to that. AAG, Guay stated Mr. Hitchcock is willing to forgo as the members know they typically do two parts of a hearing. One is whether there is a violation and the second part is what the penalty should be. In the typical course there would be four mini hearings but because of Mr. Hitchcock's cooperation they have agreed in the sake of time and expediency here they are combining both proceedings and Mr. Hitchcock will also not contest the violation. So, they would move for the only hearings instead of four would be merely on the question of the penalty for the two dockets. Do you agree counsel. Mr. Bobrow stated he does. Attorney Bobrow represented Mr. Hitchcock. Hearing Officer Randlett stated Mr. Hitchcock is admitting for the purpose of this proceeding to the violation so they're going forward solely for the purpose of determining what would be an appropriate remedy for the two violations that have been admitted. Hearing Officer Randlett stated this is a hearing with regard to Michael Hitchcock on two separate violations. One is an allegation of a violation of Chapters 7 and 11 with respect to a horse named Carbon Footprint which is a horse prior to the 1st race in Northern Maine Fair on August 3rd had an elevated level of Total Carbon Dioxide. The second matter which is being consolidated is again Mr. Hitchcock is alleged to violated Chapters 7 and 11 as a trainer of record for the horse Sim Brown. And again, that horse prior to the 5th race at the Northern Maine Fair on the same date August 3, 2018 showed an elevated level of Total Carbon Dioxide. Those are the two violations that have been admitted issued as appropriate penalties. He qualified the Commissioners. AAG, Guay moved for the admission of Exhibit 1, Notice of Hearing. Hearing Officer Randlett stated are both parties stipulating that Mr. Hitchcock did violate Chapters 7 and 11 of the departments rules as trainer of record for the horses Carbon Footprint and Sim Brown that those horses on August 3, 2018 at the Northern Maine Fair did have elevated levels after testing for total carbon dioxide. Attorney Bobrow stated for trainer of record and TC02. Attorney Guay stated yes, they are stipulating that all the elements of the violation are present. He stated the recommendation is an application of the rules, Chapter 17, Section 5 that they took a look over time and they find that a 1st and 2nd violation so they admitted to both violations they would recommend with this substance that it's a Class B penalty and that the minimums would be a \$500 fine and a 15 day suspension for the 1st and for the 2nd it would be \$1,000 fine and a 30 day suspension. They would suggest that his good behavior during the proceedings his standing up taking responsibility for the condition of the horse not putting the department and the Commission through a lengthy proceeding be considered as mitigation from the minimums. Hearing Officer Randlett asked Attorney Bobrow if he had any exhibits he wished to offer into the record. Attorney Bobrow entered the exhibits into the record with no objection. Hearing Officer Randlett stated there is an exhibit marked as Exhibit A, Driver Summary for Michael G. Hitchcock; Exhibit B, Race Chart for Sim Brown at Northern Maine Fair Association on August 3rd; Exhibit C, 6 different summaries for 6 different trainers showing the penalties imposed for similar types of violations in the past; Exhibit D, Copy of the penalty box from 2015 from the Maine Harness Racing Association (4 pages); Exhibit B-1, Summary of the race results from race 1 at the Northern Maine Fair Association for August 3rd regarding Carbon Footprint. They were admitted into the record with no objection. After a few questions from the Commissioners and argument from Attorney Bobrow Hearing Officer Randlett closed the hearing for the Commission to deliberate. He stated they are simply deliberating on what would be an appropriate remedy for the two violations. They are separate violations so you would be imposing the violations independently. The request is with respect to these violations there is a minimum penalty for a 1st and 2nd violation the way they are being treated. The minimum penalty for the 1st is a \$500 fine and a 15 day suspension and the minimum penalty for the 2nd is a \$1,000 fine and a 30 day suspension. The argument that has been presented to you by Attorney Guay and Attorney Bobrow is that there are mitigating circumstances in this case in particular the level of cooperation and assistance from the admission and other issues with respect from Mr. Hitchcock that would allow you to deviate from those minimum penalties to a different amount and what's being proposed to you from Attorney Bobrow is that

the two fines for the minimums be combined for a total of \$1,500 but that with respect the suspension you impose a 30 day suspension total now that can be done in one of two ways legally. You could impose a 30 day suspension on one and a 15 day suspension on the other violations and run them concurrently which means they would run at the same time that there would be a total of 30 days spent or you could just impose a 30 day suspension for both violations taking into account the mitigating circumstances. Commissioner Kelleher stated they could run them 15 and 30 consecutively. You missed that one. Hearing Officer Randlett stated that's true he didn't mean to mislead them and make it clear that you are not limited to 30 days. You could impose any other penalty even penalties beyond the minimums that you believe are appropriate for the violation. He just wanted to make sure you understood that. His intent was to describe for you how legally you could get to 30. After deliberations, Commissioner Kelleher moved on the 1st violation be \$500 fine and 15 days. He agreed with the 2nd violation of \$1,000 fine and 30 days and not to be considered consecutively that he does 45 days. Commissioner Timmons stated you've heard the motion. Does anyone want to second that. Commissioner McFarland seconded. Commissioner Timmons asked for further discussion on that. Commissioner McFarland stated he thinks under the circumstances again having participated here for a while it's not typical that they have a violator here with his attorney to verify and to basically agree the fact they have agreed there is a violation and they didn't have to go through that. What has been proposed here as a penalty is the minimum requirement as spelled out in their current rules and regulations Chapter 17. He thinks that's important they've only basically presented them with the position of mitigating them down to the minimum in that respect the violation where they do have the power to access more but under the circumstances the fact they've admitted their guilt in that respect and it's now their job to access the penalty and he thinks what is proposed is fair and reasonable in this circumstance. Commissioner Shiers stated he's all set. Commissioner Timmons asked for any further discussion. He asked for a vote. Commissioner McFarland stated he would like to make an amendment to that motion under the circumstance. To the time that this violation occurred as some of them remember until the recent change in legislation there was a corrected version of the statute that provides now for the loss of purse prior to that there was a deficiency that was noted therefore he wants it clear in this amendment that there is no loss of purse because he doesn't want to go back to Superior Court on an appeal. Commissioner Timmons stated that is true the dates that were involved here would have been during that timeframe. Vote 5-0. Hearing Officer Randlett stated so to be clear for the purpose of the record the Commission decided based for penalty is that there would be a \$500 fine and a 15 day license suspension on the 1st violation, a \$1,00 fine and 30 day license suspension on the 2nd violation, and those would run consecutively for a total of 45 day suspension and \$1,500 fine and no loss of purse. Attorney Bobrow asked for the suspension to go into effect immediately. Hearing Officer Randlett stated there's been a request that the suspension begin immediately. Attorney Guay stated that's typically handled between the executive director. What he's doing is waiving the appeal. Attorney Bobrow stated that's correct. Hearing Officer Randlett stated okay there will be a written decision that will be issued with respect to this proceeding. He asked Mr. Guay if he's going to recommend a proposed decision. Attorney Guay stated he can. Hearing Officer Randlett closed the hearing on Mr. Hitchcock.

- e. **RE: Michael Hitchcock, Complaint Number 2018 MSHRC 15.** Mr. Hitchcock is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Hitchcock is the trainer of record for the horse, "Sim Brown". A blood sample obtained from Sim Brown prior to the Fifth (5th) Race at Northern Maine Fair on August 3, 2018, showed an elevated level of total carbon dioxide.
See Complaint Number 2018 MSHRC 14 above.
- f. **RE: Randal Smith, Complaint Number 2019 MSHRC 01.** Mr. Smith is alleged to have violated MSHRC Rules Chapter 7 and 11. Mr. Smith is the trainer of record for the horse, "For Kevin's Sake". A blood sample obtained from For Kevin's Sake prior to the Third (3rd) Race at Scarborough Downs on April 20, 2019, showed an elevated level of total carbon dioxide.
Commissioner Timmons stated Commission Kelley left at this point.
AAG, Guay opened the hearing. He qualified the Commissioners. Randal Smith was present and represented himself. AAG, Guay asked if there were any objection to any of these Commissioners hearing your case. Mr. Smith stated yes sir. AAG, Guay stated you don't mind if they hear your case.

Mr. Smith stated no sir he does have one specific objection. AAG, Guay stated okay who is that. Mr. Smith stated Mr. Michael Timmons. AAG, Guay stated what is the basis of your objection. Mr. Smith stated the basis of that objection is the fact that they have a previous history where he was stabled at the fairgrounds that he runs. He was instrumental in removing himself and his mother from that fairgrounds due to a previous incident. AAG, Guay stated okay and in your mind it's better you don't get into the detail because to the extent it would prejudice the other Commissioners if it's not good things but that involves Mr. Timmons specific personally in his role. Did you have an issue with the Cumberland Fairgrounds or Mr. Timmons specifically. Mr. Smith stated the fairgrounds and Mr. Timmons is the president of the fairgrounds was instrumental in having them leave the fairgrounds. Attorney Guay stated these types of decisions under the Administrative Procedures Act the fact finder the person who's being challenged makes a decision whether they stay on the case or not. Harness racing is a bit unusual though and they've actually managed to avoid this up until this point. If Mr. Timmons were to recuse himself it's not an issue but before you answer that if he does not recuse himself then they would put it to a vote to the remaining 3 Commissioners whether the chair would stay on and hear the case. That's under the harness racing law. It's very unusual but it is a feature of their law. So, with that Chair Timmons do you wish to voluntarily recuse yourself or would you like it to be put to a vote of the Commission. Commissioner Timmons stated no, they can vote if they like but he's not going to recuse himself because he has no prejudice against anything with this gentleman. It was a long time ago. There are always two sides to every story. He'll save his side there's no need to get into it. The legal decisions were made by the board. He was president and he's still the president. There are times when negative things happen but whatever it is, he's not going to step down because he has no prejudice whatsoever against Mr. Smith. AAG, Guay stated okay now this is the first time ever. They've got to decide how to proceed with this. They have absolutely no guidance on the Commission they've got no precedence on how to do this. You could do a motion right off. Commissioner Kelleher moved Mr. Timmons remain as chair of the Commission and hear this case. Without bias. AAG, Guay stated the other thing you could do the 3 Commissioners could hear a little bit more about it then make a decision based on a little bit more facts but it's up to you. Is there a second to the motion. Commissioner Kelleher stated he doesn't need to hear anymore. He's an honorable man and he's known him for years. Commissioner McFarland seconded the motion. AAG, Guay stated the motion is that the Commission not remove Chair Timmons from this case. Vote 3-0. He stated they will preserve this as an issue on the case. He asked if there were any other objections to the proceeding at this point. Mr. Smith stated he doesn't have an objection to anything at this point. Obviously, Mr. Greenleaf was just able to give him the documentation so he's just trying to go over them. AAG, Guay stated the next question is he is going to record for the record that other than the objection to Chairman Timmons which has been dealt with by the Commissioners there are no other objections. He asked Mr. Jennings if he had any objections to the proceeding to this point. Mr. Jennings stated no he does not. AAG, Guay asked Mr. Jennings if he has any proposed exhibits he would like to introduce. For the purposes for the record, the department would move for the admission of exhibits 1-7. Exhibit 1, Notice of hearing; Exhibit 2, Owner/Driver/Trainer's application; Exhibit 3, Scarborough Downs April 20, 2019 Race program; Exhibit 4, Notice of Positive Test; Exhibit 5, Testing Slip 0098597; Exhibit 6, Sample Shipment List and Exhibit 7, Positive Sample Report issued by Analytical Forensic Testing Laboratory. Mr. Smith did not object to these exhibits. AAG, Guay asked Mr. Smith if he had any exhibits. Mr. Smith had one which is Licensee Exhibit 1, A test barn chain of custody and procedures considerations and recommendations issued by RMTC. AAG, Guay admitted with no objection from Mr. Jennings. AAG, Guay gave Mr. Smith his oath. Mr. Smith provided testimony. AAG, Guay gave Mr. Greenleaf and Dr. Matzkin their oath and they both testified. AAG, Guay closed the evidentiary phase of the hearing and turned it over to the Commission for deliberations. Commission Timmons stated you've heard the testimony from Dr. Matzkin you've heard the testimony from Mr. Smith, and you've had an opportunity to ask questions. What is your wish Commissioner McFarland? Commissioner McFarland stated he would make a motion that a violation based on their rules and regulations that they go by has been committed. Commissioner Shiers seconded. Vote 4-0. AAG, Guay stated now they're at the penalty phase and the way that works is the department makes a recommendation for the penalty and you get to testify why you don't agree with the recommendation. Mr. Jennings stated he thinks it's important to note based on their ability to research history which is limited they don't have any evidence that Mr. Smith has prior violations for prohibited substances. They

note that total carbon dioxide elevated levels of total carbon dioxide would come out as a Class B penalty and that the minimum violation for that would be \$500 fine and a 15 day suspension just as the previous case was. Given Mr. Smith's track record and history the departments comfortable recommending the minimum penalty. Commissioner Timmons stated so the department is recommending a \$500 fine and a 15 day suspension. Commissioner Kelleher stated he put a motion in front of the Commission that Mr. Smith be fined \$500 and a 15 day suspension of his license. Commissioner McFarland seconded the motion. Commissioner Timmons stated it's been moved and seconded that there be \$500 fine and a 15 day suspension. Any further questions from anyone on the board. Hearing none. All those in favor of the motion please indicate. Vote 4-0. Commissioner McFarland made an amendment to the motion that there will be no loss of purse. AAG, Guay stated there is a time frame when the Commissioners vote on the written decision and an appeal period the practice has been that if you speak to the executive director and you want to have the suspension go into place immediately that means you're waiving your appeal waiting for the written decision. Some people like to get the suspension out sooner other people like to get it done later. Just have that discussion with the executive director but he also likes to have people know that if you have your suspension immediately that means you're essentially waiving your appeal.

- g. RE: Steven Wilson, Complaint Number 2019 MSHRC 06.** Mr. Wilson is appealing the decision of Presiding Judge Dana Delisle to place Mr. Wilson's horse for interference following the Sixth (6th) Race at Skowhegan Fair on August 13, 2019.

AAG, Guay stated he granted a continuance yesterday. There was a request. Originally the department wished to continue the case, but Mr. Wilson opposed it and then the department consulted with him and they looked at whether or not there was sufficient notice, and that's something they need to take a look at in cases going into the future. So essentially the case involves a placement where the person who might have, he's not sure if they benefited or he assumed they benefited from the placement they weren't notified of the hearing so based on that they ended up doing a continuance. Now in this case there's another wrinkle because Mr. Jennings had sought out a motion from the driver who he guesses didn't have email so then the owner had submitted the actually request if he remembers and he's going to disclose this because he's given advice to the department he's not sure he can do the case anyway. He attends the fair once a year and he attended the fairs at the Farmington Fair and he didn't know who the parties were so for example he had discussions not about this case just general discussions standing around with Steve Wilson and more over he was honored he understands a tradition or whatever he was asked to go into the winners circle for one of the races and he's not familiar with the industry but understood that was something that's cool to do. The person who won the race is Bill Varney who was the owner in this case, so he's thinking that he would potentially recuse himself, but he doesn't think it's going to affect him being the presiding officer in this proceeding one way or the other but if the Commissioners have a problem with him being the presiding officer because he had his picture taken in the winner's circle with Mr. Varney he will respect that and he won't be the hearing officer. He just wanted to make that disclosure. To the extent any of you have horses that raced and he's at the track once a year and you want him to have his picture taken with your horse, he'd be happy to do that. He thinks it's pretty cool. Mr. Jennings stated can he just add that the judge who made the ruling had a sudden and unexpected conflict also so there was a series of things that happened in this case that suggested it probably wasn't very good for them to hear it right now. AAG, Guay stated right but in any event, Mr. Wilson had opposed it and the rule is if it's opposed then they were all gathered here today but he guesses he changed his view. He would ask for the Commission to indicate whether or not they need to find another hearing officer on this case. The Commissioners agreed to not get another hearing officer.

- 4. Overview/Update on Prohibited Substance Testing.** Miles Greenleaf will give an overview/update of the prohibited substance testing results.

Mr. Greenleaf stated they still have one case from last year that they are still waiting for like the DNA, but they have 3 cases this year and they just settled one and they have 2 coming shortly. AAG, Guay stated when you said you settled it do you mean the Commission settled it. Mr. Greenleaf stated yes. They are waiting for Mr. Smith's case and 2 others.

5. Other Business

Mr. Jennings stated many of you may know there was an explosion that happened in Farmington that canceled racing. He got a call and a request from the race director at Farmington to be able to add a couple of dashes to the Friday and Saturday card. He asked himself well who might be adversely affected potentially by that and he thought well only Cumberland Fair. He called the race director for Cumberland Fair and required as to whether they would object to that and that person did not feel they would object to that, so he needs this Commission to bless the granting of a couple of extra dashes to Farmington Fair to help make up for their loss on being unable to race on Monday. Commissioner Timmons stated you've heard the request. AAG, Guay stated the motion would be to reopen the race date assignment hearing for 2019 and award Farmington Fair 2 additional dashes for September 20th and 2 additional dashes for September 21st if you guys agree to do that you can just say what the hearing officer said and they will get it recorded correctly. Commissioner Kelleher moved the motion. Commissioner McFarland seconded. Vote 4-0-1. Commissioner Timmons recused himself.

6. Public Comment

Mr. Dinsmore stated if he'd been charged by Mr. Hall with leaving the paddock before the race was called official, he wouldn't be here. He would have paid his fine and done his thing.

Diann Perkins stated if you'd consider Mr. Wilson's case that was a Sire Stakes horse and it was one of the top horses so it's probably not going to effect, but if it had been down lower you might have had to consider having that case heard because it would have effected going into the finals. AAG, Guay stated that was considered. She also would like to ask if they would please appoint a Sire Stakes Committee.

Commissioner Timmons stated if you come to his fair this next week starting the 22nd through the 28th on the radio this morning with Ray Richardson which covers southern Maine he reached out to any firemen in Cumberland county if they would come to the fair. They're going to have a week of fundraising and all the money is going to Farmington and the farm people that were hurt bad there.

Commissioner Shiers stated he would like to make one comment. This trackmaster rating system is working super. People are buying more horses.

Commissioner McFarland stated should they consider now the November timeframe since we know the applications as they voted today have to be in October 20th.

7. Schedule of Future Meetings:

October 25, 2019

8. Adjourn

2:12 p.m.